



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312666-22

<b>Development</b>	Indefinite retention of change of use from shop to hot food takeaway premises and for canopy to front elevation.
<b>Location</b>	"Frydays", Strand Road , Tramore , Co Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21415
<b>Applicant(s)</b>	Mohammed Idress Nasirs
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Split Decision - Grant & Refuse Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ivan Borisov
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> of October 2022
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The application site is located on Strand Road, Tramore. The site contains a flat-roofed structure with a commercial take-away unit at ground floor, fronting onto Strand Road. This has a narrow road frontage and shop front. An amusement arcade adjoins the property to the immediate south and a fast-food take-away to its immediate north.
- 1.2. Strand Road is characterised by a mix of primarily tourist/leisure related uses. The retention use, adjoins Massimo's Take Away' and 'Atlantic Amusements'. There is a narrow laneway along the side of 'Massimo's Take-away', which leads to a carparking area at the rear. The rear of the subject site can be seen from this car parking area.
- 1.3. 'Strand Leisure' is located further to the north. Tramore Amusement Park is located on the opposite side of the road from the site to the east. There is an also an area of carparking on the opposite side of the road. The site is midway along Strand Road and Tramore promenade and beach are located in proximity to the south of the site.

## 2.0 Proposed Development

- 2.1. This proposal is for the indefinite retention for Change of Use from Shop to Hot Food Takeaway Premises and New Canopy to front elevation at 'Frydays' Tramore.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 25<sup>th</sup> of January 2022, the Council decided on a split decision i.e.: To grant retention permission subject to conditions for the change of use from retail shop to take-away and to refuse retention permission for the canopy to the front elevation of the premises for the following reason:

- Having regard to the design and finish of the subject canopy and associated signage it is considered that retention of same would detract from the existing streetscape and would result in a diminution of urban design standards contrary to stated policies in the Tramore Local Area Plan which *'requires a*

*high standard of design for all new Town Centre development and the refurbishment of existing properties*'. The proposed development would therefore be contrary to the policies provisions of the Tramore LAP and would adversely impact the streetscape amenities of the area and seriously detract from the overall amenities of the area and as such be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

The Planner had regard to the locational context of the site, planning history and policy, to the inter departmental reports and to the submissions made. They noted that the takeaway use complies with planning policy given the town centre zoning. They recommended that Further Information be submitted to include the following:

- The applicant was invited to submit revised proposals omitting the canopy and providing for revised shop front signage proposals containing individual letters. They advised that the stick-on advertisements and plastic PVC signage (beneath the canopy) be omitted in a revised proposal.
- A Regulation Certificate in accordance with Section 20C of the Building Control Regulations (1997-2020) is required for the unauthorised change of use that has occurred in this building.

#### Further Information response

Halley Murphy & Associates architects, response on behalf of the applicant includes the following:

- The applicant wishes to retain the canopy which they consider contributes to the character of the streetscape, which largely comprises of amusements, gaming arcades, holiday shops and takeaway premises. They note a variety of shop fronts and other large canopies in the area.
- The applicant anticipates that he should be in a position to fund the application as soon as GSP Fire Limited have availability to make the application. They ask that this regularisation cert be made a condition of the Planning Retention in the circumstances.

### Planner's Response

The Planner had regard to the F.I submitted and their response includes the following:

- They recommended a split decision i.e that the retention permission be granted subject to conditions for a change of use from retail shop to take-away and that the canopy to the front elevation of the front elevation of the premises be refused.

#### **3.2.1. Other Technical Reports**

##### Chief Fire Officer

They provide that a Regularisation Certificate in accordance with Section 20C of the Building Control Regulations (1997 to 2020) is required for the unauthorised material change of use that has occurred in the building.

#### **3.3. Prescribed Bodies**

None noted

#### **3.4. Third Party Observations**

Submissions made in summary include the following:

- Concern that an unauthorised change of use has occurred.
- There are more than enough fast-food outlets operating in Tramore.
- Issues concerning public health and fire safety.
- Issues regarding the public notices

### **4.0 Planning History**

The Planner's Report provides a detailed recent planning history of development in the surrounding area. This refers mainly to mixed use and commercial/leisure development in the area and does not appear to relate specifically to the subject site. The following is of particular note:

- Reg. Ref. 16/173 – Permission granted subject to conditions to Strand Leisure Concepts Ltd for a cantilevered canopy, additional signage and general elevational alterations, all to the front elevation to Strand Road, together with an extension to the existing apartment at first floor level and all associated site development works at Strand Leisure, Strand Road, Tramore.

This relates to the adjoining premises to the north of the subject site ‘Strand Leisure’.

## 5.0 Policy Context

### 5.1. Waterford City and County Development Plan 2022-2028

This includes that the Development Plan will be used to inform subsequent Local Area Plans (LAPs). It is intended to prepare new LAPs for areas in Waterford City, Dungarvan, Tramore, Dunmore East, Portlaw, Lismore, and Gaeltacht na nDéise during the lifetime of this Development Plan. These will cover a wider range of locally specific planning issues in more detail. The Core Strategies and associated land use zoning provisions of these LAPs will be consistent with the content of this Development Plan.

#### Tramore - Core Strategy

Section 2.5 notes that the three Local Area Plans for Tramore, Portlaw and Lismore form the lowest tier of statutory plans, having been made so as to be consistent with the Waterford County Development Plan 2011 – 2017 and its core strategy.

Following the preparation of the new unitary Development Plan for the city and county, and the new core strategy which is consistent with the NPF and SRSES, it is intended to prepare new LAPs for areas in Waterford City, and the urban settlements including Tramore. While LAPs will be prepared in due course, their Core Strategies and associated land use zoning provisions will be consistent with the content of the unitary City and County Development Plan as made by the Plenary Council. Policy Objective CS08 refers.

Section 2.9 refers to County Settlements and includes Table 2.2 Settlement Hierarchy and Typology. Tramore is included in Class 3A as a ‘Large Urban Town’, which provides a housing employment and or service function.

The Development Plan proposes to consolidate the future growth of the commuter town within its built footprint and with strategic objectives to support compact, town centre and sequential development. Settlement Strategy Policy Objective CS13 includes:

- *Support the development of Tramore in a manner which encourages a more self-sustaining model of settlement, and a move away from an over-dependence on employment in Waterford City; and..*

#### Tramore – Retail Strategy

Section 3.6.1 notes: *The Retail Strategy for Waterford City and County (Appendix 4 and Chapter 3 Part 2 of the Plan) aims to consolidate Waterford city centre retail core as the premier retail destination in the County and Region, to promote retail development in Dungarvan and Tramore town centres, suburban district/ neighbourhood centres and to cater for local retail needs of communities across the County.*

Table 3.3 provides the Waterford Retail Hierarchy – Tramore Town Centre is described as a Tier 2 (L2) District/Suburban Centre.

Section 4.12 seeks to: *Ensure that the towns of Dungarvan and Tramore continue to play important complimentary and supportive roles within their respective catchment areas.*

Retail Policy Objective 04 refers to development in Multifunctional Centres including Tramore Town Centre: *which are of a high quality urban realm and placemaking standard, provide a variety of uses at an adequate and appropriate scale, which facilitate the development of 10 minute communities/neighbourhoods.*

Section 11.8 relates to the character and quality of shopfronts. Policy BH15 relates.

## **5.2. Tramore Local Area Plan 2014-2020**

The Local Area Plan sets out the overall strategy for the proper planning and sustainable development of Tramore for the period 2014-2020. This notes that the subject site is within the 'Town Centre' Land Use Zoning. As noted on the Land Use Zoning Matrix a 'Takeaway use' is open to consideration

Section 4.5.1 refers to Townscape Character & Vitality. This includes:

*It is also important to recognise the role of traditional shop fronts and their contribution to the character of the Town Centre. The Council will encourage the retention of shop fronts of quality and promote the repair of traditional shop fronts. This will not preclude proposals which are contemporary in design, provided that such proposals do not have a negative impact on the surrounding townscape, and such that the designs are sympathetic to the overall character of the Town Centre.*

Policy ETD 8 relates to providing a high standard of design for all new Town Centre development.

### **5.3. Natural Heritage Designations**

European Sites in the vicinity of the coast include:

- Tramore Black Strand SPA
- Tramore Dunes and Backstrand SAC

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A Third Party Appeal has been submitted from Ivan Borisov and the grounds of appeal include the following:

- The place has been operating without relevant planning permission as a fast food restaurant since mid-2020 and has been fully equipped for this kind of business from the same date.
- They are concerned that this is an illegal food business that has been operating without planning permission. It does not appear to have registration and approval by the local health authorities and a Fire Safety Certificate.
- Despite a closure order served by the Council, the premises has continued to operate throughout the planning process.
- By granting this business Waterford County and City Council have showed that anyone can open and operate any business without required permissions.

- There is a proliferation of such businesses in the area and they provide details of such types in the area.
- They are concerned about littering, in particular close to Tramore's Promenade.
- While the government is allocating money for greenways, gyms and a healthier living style the Council are granting another take-away in the Tramore area.
- They are concerned that an unauthorised change of use has obtained permission from the Council and provide that the beauty of the sea and Tramore's promenade needs to be preserved and taken care of.
- They note another new takeaway has opened in Tramore and has obtained planning permission.
- They include photographs to show that 'Frydays Takeaway', has remained open.

## 6.2. Applicant Response

Halley Murphy and Associates have submitted a response on behalf of the First Party which includes the following:

### Decision Part One

- They question as to whether the Third Party has commercial competition motives in making this appeal.
- No copies of alleged complaints have been exhibited with the Third Party Appeal. They suggest that the appeal should be invalidated.
- The issues of registration and fire safety certificates are matters for the Health Authorities and for Fire Safety. They submit that these matters are in order.
- 'Frydays' is not operating on the Promenade in Tramore, but on Strand Road. During the summer months there are a number of casual traders who operate on the promenade itself. Frydays is not one of these.
- They submit that there is a need for fast food establishments in the area.



- Many of the businesses operating on Strand Road are long standing and local.
- They submit that litter will not be an issue.
- The building where the business is situated is small and narrow so makes little impact on the streetscape.
- The submit that Waterford is officially a great place to live and point out the many of the advantages of the county.
- People need healthy options but also fun and takeaway food.

#### Decision Part Two

- The canopy has been in place for 7 years and no question or objection has been raised until now.
- They submit that it is not made of cheap materials and provide details of cost.
- The family were long standing business owners in the area, but they note through various issues, that this is the only bit of business premises that the family managed to hold onto.
- The canopy is in keeping with canopies in the area and the signage is not a separate structure.
- As the building is small and narrow it needs bright signage to draw attention to so that it can attract business.
- So may businesses failed through the pandemic restrictions. Now all businesses including the subject one, are fighting for survival. They ask not to let this business be another failure.

#### **6.3. Planning Authority Response**

There is no response from the Planning Authority on file.

#### **6.4. Observations**

None to the Grounds of Appeal on file.

## 7.0 Assessment

### 7.1. Nature of Use and Policy Provisions

- 7.1.1. This proposal is for the Indefinite Retention for a Change of Use from Shop to Hot Food Takeaway Premises and of the New Canopy for Retention. It is of note that the Change of Use has occurred and the use is operational and that the Canopy is in-situ. The use is currently unauthorised and the issue is whether such a change of use and canopy would have been permitted in the first place had the unauthorised use/development not occurred.
- 7.1.2. It is noted that the Waterford City & County Development Plan 2022-2028 has been adopted. Section 4.12.4 refers to the Core Retail Areas (CRA) and includes Figure 4.5 showing Tramore Town Centre. This seeks to strengthen retail character and notes the mix of retail and non-retail. It includes: *Applications for other retail service outlets and other uses such as internet residential, cafés, call centres, bookmakers, take-aways, off-licences, amusement arcades, car rental, financial institutions and offices at ground floor level will be assessed on their merits, and may only be permitted where such development would not result in a predominance of such similar non-retail frontages in the CRA.*
- 7.1.3. Regard is had to the Tramore Local Area Plan 2014-2020. As shown on the Land Use Zoning Map, the site is within the 'Town Centre' Land Use Zoning where the Objective seeks: *To provide for an integrated mix of residential, commercial, community and social uses within the town or village centre.* As per the Zoning Matrix a 'Take-Away' is 'open to consideration' within this zoning.
- 7.1.4. It is noted that there a number of commercial uses in the area that include takeaway and leisure uses and it could be said that there is a prevalence of take-away facilities in the area. However, this town centre area which while adjacent is not on Tramore promenade, contains a variety of leisure facilities including amusements on the opposite side of the road. It is not in a residential area and there is ample carparking in the vicinity both roadside and to the rear of the premises. It not considered that the addition of this small take-away unit in this particular area, would detract from the character of the area. Given the zoning, development plan policy and pattern of

development in the vicinity, a take-away facility at this location would not be deemed to be inconsistent with the policies and objectives of the area.

## **7.2. Design and Layout**

- 7.2.1. The application site encompasses the small narrow rectangular unit. As shown the Shop Front is c.4m in width and the area of the unit is c. 133sq.m. The Floor Plans show that the take-away facility includes a public area, servery, cooking and prep areas, office/store, staff toilet facilities and a store. They also indicate that there is an extraction ducted to roof level.
- 7.2.2. It is an infill two-storey height unit and is located between 'Massimo's Fish & Chips take-away' and the 'Atlantic Amusements building. There is a narrow laneway to the north of 'Massimo's located between that premises and 'Strand Leisure', with car parking at the rear. There is also on-street parking on the opposite side of the road and I would not consider that car parking is an issue in the area.
- 7.2.3. Having regard to the above, I would not object to the retention of the change of use. It must be noted that compliance with Health and Safety issues including Fire Safety are dealt with under separate remit.
- 7.2.4. If the Board decides to permit retention of this change of use, I would recommend that conditions regarding opening hours and the control of litter be included.

## **7.3. Advertising – Canopy**

- 7.3.1. The Planning Authority in a split decision have refused permission for the retention of the canopy. This is a semi-circular solid projecting canopy that encompasses the width of the shop front elevation. The projecting semi-circular canopy proposed for retention makes the narrow frontage of the premises more visible when seen from the Strand Road frontage and surrounding area. It is painted blue to match the existing building and provides advertising along with signage on the frontage for 'Fryday's Take Away, Fish & Chips'. It is noted that 'Strand Leisure' further north has a flat projecting canopy ((Reg. Ref. 16/173 refers) and another (unnamed) premises further up Strand Road also has a semi-circular canopy, that appears narrower in width than the subject canopy. Therefore, there is a precedent for canopies for larger buildings (with wider frontage) on this street.

- 7.3.2. However, the issue with the subject canopy for retention is its size and depth relative to the narrow shop front of the existing building. I would consider that if it were applied for in the first place that it would be considered that it presents an overly large/dominant feature that is not well integrated with the existing building or the street scape. While the First Party response to the Appeal says that the canopy has been in situ for the past 7 years, no evidence has been provided to support this.

Section 11.8 of the Waterford City and County Development Plan 2022-2028 relates to the character importance of shopfronts: *Shopfronts are one of the most important elements in shaping the character and quality of retail streets. An attractive façade and shop front give a good impression of the business and the streetscape in general.* Policy BH15 relates: *It is the policy of the Council to ensure that all original and traditional shopfronts which contribute positively to the appearance and character of a streetscape are retained and restored and new shopfronts are well designed, through the sympathetic use of scale, proportion and high quality materials.*

- 7.3.3. Policy ETD 8 of the Tramore Local Area Plan 2014-2020 seeks to: *Require a high standard of design for all new Town Centre development and the refurbishment of existing properties, taking account of the natural and built heritage of the Town to ensure developments enhance and respect the character and setting of Tramore.*
- 7.3.4. I would not consider that the canopy proposed for retention adds to the streetscape and character of this part of the town of Tramore. I consider that it would set an undesirable precedent for further large-scale non-integrated signage including on narrow shop frontages. I would recommend that the Board refuse retention of this canopy.

#### **7.4. Appropriate Assessment Screening**

- 7.4.1. Having regard to the nature and scale of the proposed development i.e: for the retention of a change of use from shop to hot food takeaway and for a canopy to the frontage of the premises and to the location of this serviced development in Tramore town centre and the nature of the receiving environment and distance to the nearest European site, it is concluded that no Appropriate Assessment issues arise and the

proposed retention development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. I would recommend a split decisions i.e.: that retention permission be granted for the change of use from shop to hot food take-away premises and refusal of permission for retention of the canopy.

## **9.0 Reasons and Considerations**

### **9.1. Schedule 1 – Refusal**

#### **Reasons and Considerations (1)**

1. It is considered that the retention of the canopy as proposed results in a poor design concept that would appear overly large and dominant in the streetscape and would result in a lack of integration with the narrow shop frontage of the existing building to the detriment of the character of the area. It would set an undesirable precedent for such form/scale of canopy advertising on commercial frontages and be contrary to Section 11.8 and Policy BH15 of the Waterford City and County Development Plan 2022-2028 which relates to retaining the character of shopfronts and Section 4.5.1 and Policy ETD 8 of the Tramore Local Area Plan 2014-2020 which relates to requiring a high standard of design to ensure developments enhance and respect the character and setting of Tramore. The retention of this canopy would, therefore, be contrary to the proper planning and sustainable development of the area.

### **9.2. Schedule 2 – Grant Permission**

Grant permission for the retention of the change of use from shop to hot food take-away.

#### **Reasons and Considerations (2)**

It is considered that subject to compliance with the following conditions, the retention of the change of use to a take-away facility would not be out of keeping with the town

centre land use zoning in the Tramore Local Area Plan 2014-2020 and general uses in this area of Tramore and would not be detrimental to the character and amenities of the area, or to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development proposed for retention shall be in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the Planning Authority on the 22<sup>nd</sup> of December 2021, and to An Bord Pleanála on the 8<sup>th</sup> of March 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The existing canopy for retention is not permitted and details of all external signage to the shopfront shall be the subject of a separate application to, the planning authority.

**Reason:** In the interest of visual amenity.

3. The hours of operation of the takeaway use shall be submitted to, and agreed in writing with, the planning authority within 2 months of the grant of this retention permission.

**Reason:** To protect adjacent amenities in the interests of proper planning and sustainable development of the area.

4. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to and agreed with the planning authority within 2 months of the grant of this retention permission.

**Reason:** In the interest of public health and to protect the amenities of the area.

5. Water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

6. A plan, containing details for the management of waste within the development including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority within 2 months of the grant of this retention permission. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of visual amenity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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Angela Brereton  
Planning Inspector

25<sup>th</sup> of October 2022